

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CR 19 - 40080

Plaintiff,

FACTUAL BASIS STATEMENT

vs.

HULTGREN CONSTRUCTION, L.L.C.,

Defendant.

Defendant Hultgren Construction, L.L.C., agrees that the following facts are true, and the undersigned parties stipulate that the following facts establish a factual basis for the plea in the action pursuant to Federal Rules of Criminal Procedure 11(b)(3):

On or about the 2nd day of December, 2016, in Minnehaha County, in the District of South Dakota, the Defendant, Hultgren Construction, L.L.C., an employer under the provisions of the Occupational Safety and Health Act, did willfully violate the standards and regulations relating to instruction and training on proper demolition methods promulgated and prescribed under the Act and said violation caused the death of Ethan McMahon, in violation of 29 U.S.C. § 666(e).

At times relevant to this case, Hultgren Construction, L.L.C., was a company providing residential and commercial construction services throughout South Dakota, and the company employed approximately eleven (11) employees in South Dakota. On or about and at times prior to December 2, 2016, Hultgren

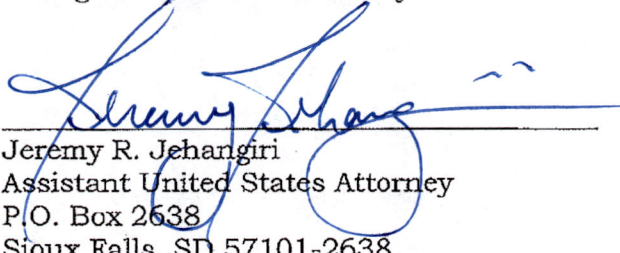
Construction, L.L.C., the controlling and exposing employer, did not sufficiently instruct employees in the recognition and avoidance of unsafe conditions related to temporary shoring supporting a multi-story building. Employees were tasked to remove two adjoining exterior load bearing walls between the ground level and first floor. Employees were not sufficiently instructed in the means and methods for building and installing a temporary shoring system to transfer the building loads from the foundation to the shoring system. In the morning hours of December 2, 2016, an employee was fatally injured as a result of removing the last segment of the load bearing wall, thereby causing the structure to collapse.

Hultgren Construction's acts and omissions exhibited a general indifference to a known and obvious hazard. Hultgren Construction knowingly permitted employees to engage in demolition activities without sufficient training to ensure that a licensed engineering professional first prepared an engineering analysis to assess the structural stability of the building, including the planned temporary shoring systems.

DENNIS R. HOLMES
Acting United States Attorney

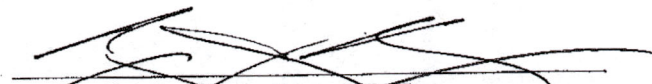
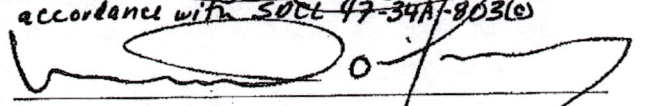
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9/5/19


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Hultgren Construction, L.L.C.
Defendant *Signed as Legal Representative in
accordance with SOCL 47-34A-803(c)*

Mark O'Leary
Attorney for Defendant